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## THE LONELY FLOWER

### Command Control of Civilian Activities at Military Installations after *Greer v. Spock*

*By: Major Dennis Corrigan, Senior Instructor*
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With the recent decision in *Greer v. Spock*,[1] decided by the Supreme Court in March of 1976, the extent of command control of the exercise of first amendment rights by civilians at military installations is again subject to dispute. It is the purpose of this article to review the *Spock* case in light of the current guidance to the field in the area of dissent and judicial interpretations of that guidance since the bellweather case of *Flower v. United States.*[2] Upon completion of this review, recommendations will be offered to assist judge advocates in advising commanders of their authority to limit leafleting, petitioning, demonstrations, and other similar activities at military installations.

The historical treatment of the exercise of First Amendment rights by civilians on post does not require long narration. Until the protest against the war in Southeast Asia began to be directed at military installations, commanders had rarely been required to institute control procedures.[3] During the war years, however, virtually all military installations implemented AR 210–10 by promulgating regulations in the following terms:[4]

> Picketing, demonstrations, sit-ins, protest marches, political speeches, and similar activities are prohibited and will not be conducted on this post except as provided in this paragraph. The installation commander may grant exceptions to the policy contained in this paragraph.
>
> Distribution on the reservation of publications, including pamphlets, newspapers, magazines, handbills, flyers, and other printed material, may not be made except through regularly established and approved distribution outlets, unless prior approval is obtained from the post commander.

Anyone who leafleted or joined a group demonstration at an installation without permission of the commander was routinely escorted off post and barred from reentry under 18 United States Code, Section 1382 (1970).[5] In 1969, John Thomas Flower, an anti-war activist, engaged in alleged dissident activity at Fort Sam Houston. The subsequent judicial review of the commander's actions against Flower established the so-called "limited access" or "open/closed" doctrine for handling civilian protestors.

To completely analyze the impact of the *Spock* case on *Flower*, the facts of the latter case must be viewed from two distinct perspectives—the facts as they actually occurred and the facts as viewed by the Supreme Court in both the *Flower* and *Spock* opinions.

The *Flower* court, *per curiam*, without benefit of briefs or oral argument stated:

> There is no sentry post or guard at either entrance or anywhere along the route. Traffic flows through the post on this and other streets 24 hours a day. A traffic count conducted on New Braunfels Avenue on January 22, 1968, by the Director of Transportation of the city of San Antonio, shows a daily (24 hour) vehicular count of 15,110 south of Grayson Street (the place where the street enters the post boundary) and 17,740 vehicles daily north of that point. The street is an important traffic artery used freely by buses, taxi cabs and other

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public transportation facilities as well as by private vehicles, and its sidewalks are used extensively at all hours of the day by civilians as well as by military personnel. Fort Sam Houston was an open post; the street, New Braunfels Avenue, was a completely open street.[6]

On the other hand, it was reported that Flower had on occasions joined with small groups of activists who not only leafleted but had also stopped and met with groups of soldiers to discuss opposition to the war effort. These confrontations and meetings had occurred not only on New Braunfels Avenue but on other parts of Fort Sam Houston, including areas devoted to soldier training. Both when apprehended and escorted off post and barred, and when later apprehended and charged with violating the bar order, Flower had leafleted on New Braunfels Avenue and at other areas of the post. He was convicted in federal district court, without a jury, and his conviction was affirmed by the Fifth Circuit Court of Appeals.[7] Upon his submission of a writ of certiorari, the Supreme Court reversed his conviction.

The Court, after reviewing the facts stated:

> Under such circumstances the military has abandoned any claim that it has special interests in who walks, talks, or leaflets on the avenue. The base commandant can no more order petitioner off this public street because he was distributing leaflets than could the city policy order any leafleteer off any public street.

With this language, the *Flower* case was added to the then growing list of cases following *Hague v. CIO*.[8] In *Hague* the court recognized that there exist certain places dedicated to public use where First Amendment rights may be exercised "passively", unfettered by government regulation.

Lower courts soon adopted the *Flower* rationale to leafleting, petitioning, and political activities at such diverse posts as the Presidio of San Francisco,[9] Fort Bragg,[10] Hickam Air Force Base,[11] Quonset Point Naval Air Station,[12] the Air Force Academy,[13] and even aboard aircraft carriers.[14] As the courts opened

posts to leafleteers, demonstrators, and political workers and candidates, commanders sought to avoid such activity by "closing" or "limiting access" to installations.[15] Because some posts could not be closed completely due to public highways traversing them or the impracticability of fencing, patrolling or guarding the gates, some commanders limited access and closed gates during non-duty hours or only closed up parts of the installation. The decision to close or limit access was thus made by the commander balancing the costs of closing against the expected frequency of unwanted first amendment activity.

Aside from this historical view, a second factor one must take into consideration when reading the *Spock* case is the shift of the Burger Court to a hands-off approach when dealing with military or even para-military cases. This shift began with *Parker v. Levy* [16] where the Court revived the "separate community" theory of military life. *Parker v. Levy* has been cited as the basis for courts permitting the military to limit soldier rights in situations where similar governmental limitations of civilian rights would be constitutionally impermissible.[17]

In this context, then, the *Spock* case provides a vehicle for a reevaluation of the permissible scope of a commander's authority to regulate civilian activity at a military installation.

In September 1972, Doctor Benjamin Spock, together with three other minority parties' candidates for President and Vice-President, wrote Major General Bert A. David, Post Commander of Fort Dix, New Jersey, seeking permission to enter Fort Dix for the purpose of conducting a political rally and distributing campaign literature to service personnel and dependents. General David denied this request relying on Fort Dix regulations of the type outlined above. He grounded his decision on the mission interference test in the regulations. Further, MG David informed Spock that "to decide otherwise could also give the appearance that you and your campaign is supported by me in my official capacity"; support that General David felt he was prohibited from supplying to any candidate for any office. A preliminary injunction was denied the candidates at the district court but granted on appeal.[18] The distribution of the campaign literature and the political rally occurred at a Fort Dix parking lot on 4 November 1972. The district court thereafter issued a permanent injunction. In an opinion by Mr. Justice Stewart, in which five justices joined, the Supreme Court reversed.[19]

The majority concluded that the lower courts had improperly relied upon the *Flower* case in reaching the conclusion that the post commander could not prevent Spock and his followers from entering Fort Dix to make political speeches or distribute leaflets. Curiously, the court *did not* then overrule or severely limit the *Flower* holding. Rather, Mr. Justice Stewart took some pains to state that *Flower* properly falls within that "long established constitutional rule" that government may not exclude first amendment activity from open parks, sidewalks and streets, such as New Braunfels Avenue—a public thoroughfare no different than any other in San Antonio, Texas, and a place where the military had abandoned any effort to control. Having thus reaffirmed the *Flower* holding, the Court then noted that no lower court ever found that the Fort Dix Commander had abandoned control of any portion of Fort Dix with respect to those who desire to distribute leaflets or deliver campaign speeches thereon. In fact, said the Court, "The record is . . . indisputably to the contrary." Not stated, but of necessity included in this rationale is a finding by the Court that at least those portions of Fort Dix, at issue, are not open parks, sidewalks and streets in the *Hague v. CIO* [20] sense. Rather the Court alluded to the fact that "[T]he State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated." The Court then found ". . .the business of a military installation like Fort Dix [is] to train soldiers, not to provide a public forum."

Such a significant difference in treatment accorded to Fort Dix as compared to Fort Sam Houston seems incredible since very little physical differences can be ascertained by the average citizen between the two posts. And Mr. Justice Brennan, in dissent, even provides pictures of the gates of each post and of a leafleteer at

Fort Dix, standing on a street not significantly different from any street in Wrightstown, New Jersey, to support his view that factual distinctions between *Flower* and *Spock* are more theoretical than real.[21] Secondly, both Fort Dix and Fort Sam Houston are dedicated to troop training, the former for Basic Combat Training and the latter Advanced Individual Training in the medical military occupation specialties. Finally, some of John Thomas Flower's activity in fact occurred off the "public street" and his actions constituted more than mere leafleting, as did Dr. Spock's political rally.

To support its view that the *Spock* case differs from *Flower* because the Commander at Fort Sam Houston had abandoned control of New Braunfels Avenue, while the Commander at Fort Dix had not abandoned control of the post, the Court, in a footnote, cites General Davis' letter.[22] Clearly the letter contains not a scintilla of evidence of past control of civilian activity at Fort Dix, prior to Spock's request to hold the rally.

The problem, then, is that at least with regard to the "public forum", "open/closed", "limited access" aspects of *Spock*, no real rule of predictability or guidance is provided. It now appears that a post need no longer take the most expensive step of physically closing the post by erecting fences, manning gates and flooding the post with police presence. But a commander need only take some easily identifiable steps to control civilians on post. For example, signs should be erected, regular routine patrolling should be established, and civilians should be occasionally stopped and asked the reason for their presence. The number of roads permitting use by civilian vehicular and pedestrian traffic ought to be reduced to a minimum.

By distinguishing *Flower*, the Court in *Spock* concluded that the post regulations were facially constitutional. Because General David denied permission to hold the requested rally, the next issue to be resolved was whether the Fort Dix regulations were constitutionally applied to Dr. Spock's request. Strangely, the Court did not address this issue in the context of the first amendment or fifth amendment notions of vagueness, overbreadth, due process or equal protection of laws. Rather, the Court held that the standards of "clear danger to loyalty, discipline or morale" and "mission interference" are constitutionally valid on the theory that the regulation is an appropriate control measure designed to keep military activities on Fort Dix wholly free from partisan political campaigns. Mr. Justice Stewart then found that such a policy is consistent with the American policy of a politically neutral armed force.[23]

As to the regulation concerning distribution of written material, the Court saw nothing in the Constitution prohibiting a commander from banning what he perceives as a danger to loyalty, discipline or morale. It should be noted, however, that this statement is made in the context of politically oriented literature and appears in the opinion directly after Mr. Justice Stewart makes his case for continuing the tradition of political neutrality. Whether the Court would conclude that such regulations are constitutional on their face is subject to conjecture, as the Court was not required to address the question. Because the noncandidate leafleteers had never asked for approval to distribute their literature, the Court held it would not address whether the regulation could be unconstitutionally applied in the future.

The fact that the Court refused to address this issue, together with the fact that the literature was politically oriented, weakens the precedential value of the holding for the judge advocate. While it appears that the Court is inclined to uphold post regulations styled like those in *Spock*, the issue of vagueness or overbreadth has not been definitively decided. A legal advisor would be wise to insure that prospective leafleteers are advised of the existence of such regulations, and, if a request for approval to distribute literature is received, the procedure for approval in paragraph 5-5, AR 210-10 is scrupulously followed. Although the Courts may now be more willing to defer to a commander's judgment as to whether a particular writing presents a clear danger to loyalty, discipline and morale, the decision should be reasonable, nondiscriminatory and, most importantly, well documented.

It would be unfortunate if a result of *Spock*, the Army and its legal advisors attempt to hide behind such phrases as "military necessity", "separate community", and "political neutrality" in avoiding the time and energy that should be expended to document command decisions limiting exercise of first amendment rights. The *Spock* and *Flower* decisions clearly point to the need for sound documented legal advice to insure mission accomplishment on the one hand and avoidance of troublesome legal rulings on the other. The *Flower* case should stand alone, not because of the *Spock* case's treatment of it but because of the infamy of poor legal service delivered by government attorneys to the Army client.

### Notes

1. 47 L. Ed. 2d 505 (1976). A complete text of the opinion is published in 76-4 JALS 1 (5 April 1976).

2. 407 U.S. 197 (1972). The principle guidance on dissent is contained in Dep't of Defense Directive No. 1325.6 (12 September 1969); Dep't of Army Circular No. 632-1, Guidance on Dissent (1 May 1974); Army Reg. No. 600-20, Army Command Policy and Procedure (C5, 25 October 1974); and Army Reg. No. 210-10, Installations (C8, 16 September 1976). *See* Corrigan and Rose, *The First Amendment—Revisited*, THE ARMY LAWYER, DA Pam 27-50-37, Jan. 1976, at 7.

3. *See* Cafeteria and Restaurant Workers v. McElroy, 367 U.S. 886 (1961).

4. Pertinent portions of post regulations in effect at Fort Dix, N.J. at the time Dr. Spock made a request to hold a campaign rally were cited by the Supreme Court in Greer v. Spock, 47 L. Ed. 2d 505, 510 (1976).

5. This statute prohibits reentry upon a military installation after being removed and ordered not to reenter by the commander. Actual presence on the installation thereafter, is punishable by 6 months confinement or a $500 fine or both.

6. Flower v. United States, 407 U.S. 197, 198 (1972). This language was excerpted from the opinion of Judge Simpson of the Court of Appeals for the 5th Circuit, 452 F.2d 80, 90 (5th Cir. 1971).

7. United States v. Flower, 452 F.2d 80 (5th Cir. 1971).

8. 307 U.S. 496 (1939).

9. CCCO-Western Region v. Fellows, 359 F. Supp. 644 (N.D. Cal. 1973).

10. Burnett v. Tolsen, 474 F.2d 877 (4th Cir. 1973).

11. Butler v. United States, 365 F. Supp. 1035 (D. Haw. 1973).

12. Jenness v. Forbes, 351 F. Supp. 81 (D.R.I. 1972).

13. United States v. Gourley, 502 F.2d 785 (10th Cir. 1974).

14. Allan v. Monger, 404 F. Supp. 1081 (N.D. Cal. 1975).

15. For example, in United States v. Gourley, 502 F.2d 785 (10th Cir. 1974) the Superintendent of the U.S. Air Force Academy sought to limit access or close the Academy grounds by closing gates and requiring all visitors to obtain passes from security police. The Court ruled that under the circumstances, the steps taken to close the post were *pro forma* and did not exempt the Academy grounds from the *Flower* principle.

16. 417 U.S. 733 (1974).

17. See, *e.g.*, Committee for G.I. Rights v. Callaway, 518 F.2d 466 (D.C. Cir. 1975); Carlson v. Schlesinger, 511 F.2d 1327 (D.C. Cir. 1975); Culver v. Secretary of Air Force, 389 F. Supp. 331 (D.D.C. 1975).

18. Spock v. David, 349 F. Supp. 181 (D.N.J. 1972), *rev'd*, 469 F.2d 1047 (3d Cir. 1972).

19. Mr. Justice Stewart was joined by Chief Justice Burger and Justices Blackmun, Powell, Rehnquist and White. Justices Brennan and Marshall dissented.

20. 307 U.S. 496 (1939).

21. Greer v. Spock, 47 L. Ed. 2d 505, 535 (1976).

22. Id., 47 L. Ed. 2d at 513, n. 7.

23. Mr. Chief Justice Burger in a separate concurring opinion expressed concern that where personnel at a military installation are isolated from political information, there is a potential for delivery by a commander of military votes for a particular candidate. To the Chief Justice such a situation would be as dangerous to the Republic as granting permission to Dr. Spock to conduct his rally.

## *United States v. McOmber*, A Brief Critique

*By: Captain Fred Lederer, JAGC, Instructor,*
*Criminal Law Division, TJAGSA*

The facts of *United States v. McOmber* [1] are simple. Airman McOmber was implicated in the theft of a tape deck and given his Article 31(b)-*Miranda* warnings by an Agent *C*.

McOmber requested counsel and was referred to the area defense counsel. Two months later (and after McOmber's defense counsel had discussed the case with the agent) the same agent interviewed McOmber about the tape deck theft and other thefts. Completely warned, McOmber made an incriminating written statement. The agent did not give notice to McOmber's attorney. The Court of Military Appeals, per Chief Judge Fletcher, held "that once an investigator is on notice that an attorney has undertaken to represent an individual in a military criminal investigation, further questioning of the accused without affording counsel reasonable opportunity to be present renders any statement obtained involuntary under Article 31(d) of the Uniform Code." [2] It should be noted that the Government had conceded that the defense counsel should have been notified but had argued that the failure to do so was not prejudicial.

At its best, *McOmber* is a long delayed decision limiting the possibility of police circumvention of the rights to counsel given by *Miranda v. Arizona* [3] and *Massiah v. United States*.[4] At its worst, the opinion appears analytically unsound and may suggest unnecessarily a major change in military criminal law. The dilemma is caused by Judge Fletcher's attempt to avoid coming to grips with the constitutional issue, relying instead "on statutory grounds," [5] grounds which I suggest are questionable at best.

Courts across the United States have failed to definitively decide the issue that faced the Court of Military Appeals.[6] The positions have ranged from that taken by past military decisions, allowing questioning with full warnings and waiver but without notification to counsel,[7] to the New York rule that prevents waiver without the physical presence of the attorney whose presence is to be waived.[8] Notification to counsel has been defended as necessary to ensure full compliance with the Supreme Court's decisions in *Miranda* and *Massiah* and to prevent subtle coercion to waive counsel rights. The problem with McOmber is not in its ultimate holding but in its rationale. Indeed the members of the Court have indicated unhappiness with the prior notification rule for some years.[9]

Chief Judge Fletcher desired to avoid the sixth amendment constitutional issue—a desire particularly appropriate in light of the Supreme Court's recent decision in *Middendorf v. Henry*.[10] Accordingly he based his holding that notification was required on Article 27 of the Uniform Code of Military Justice, 10 U.S.C. § 827 (1970). The primary difficulty is that Article 27 deals with assignment of counsel for special and general courts-martial—or in short for purposes of trial. The Court of Military Appeals expressly held in *United States v. Clark* [11] that there is no right to counsel at interrogations other than the right specified in *Miranda*. Where then does this notification provision come from? It is well and good to find that, once counsel is assigned, effective assistance of counsel requires notification of interrogations. However, is that required when counsel are assigned *despite* Article 27 rather than because of Article 27?

The Court of Military Appeals held in 1973 in *United States v. Clark* [11] that *United States v. Tempia* [12] had incorporated into military law only the minimum requirements of *Miranda* and that paragraph 140(a) (2) of the MANUAL FOR COURTS-MARTIAL, despite its apparent clear meaning, could not be interpreted to give any greater rights. The only reference of note to rights to counsel at interrogations in the Manual is paragraph 140(a) (2), and Judge Darden's opinion presents the strong inference that no statutory right to counsel at interrogations exist—such a right coming only from *Miranda*. How can Article 27 affect the issue? The Court seems to be saying that effective assistance of counsel at trial requires effective assistance of counsel at an interrogation. This is surely reasonable but can this be said when there is ordinarily no general statutory right to counsel at interrogations? The reader of *McOmber* would be tempted to conclude that the source of the new notification provision is either based in paragraph 140(a) (2) or in the constitutional provisions giving rise to *Miranda* or *Massiah*. Yet, the opinion denies these possibilities.

McOmber leaves the reader in mystery. Chief Judge Fletcher states that a statement obtained in violation of the new notification provision will

result in the statement obtained being excluded pursuant to Article 31 (d) which includes statements obtained in violation of Article 31 (which fails to mention counsel at all) "or through the use of coercion, unlawful influence, or unlawful inducement." [13] Does failure to notify constitute coercion or unlawful influence? Such a conclusion seems difficult to draw although exclusion could easily be dictated by *Miranda* or *Massiah*.

Because of the unusual phrasing of the *McOmber* opinion—an opinion that certainly appears correct in terms of result—more legal questions may have been created than have been resolved. As it is difficult to find the source of the statutory right that Chief Judge Fletcher makes use of, it may be that the Court has now found a new right to counsel at interrogations. If so, this new right may be grounded in Article 27, or, unlikely as it seems,[14] in Article 31, or in the court's supervisory power over military justice—exercised perhaps to make Articles 27 and 31 truly meaningful. In view of this lack of clarity we can only hope for later cases to resolve this perplexing question.

### Notes

1. No. 30, 817 (U.S.C.M.A. 2 April 1976) hereinafter cited as *McOmber*.

2. *Id.* at 6.

3. 384 U.S. 436 (1966) hereinafter cited as *Miranda*.

4. 377 U.S. 201 (1963) hereinafter cited as *Massiah*.

5. *McOmber at* 4-5.

6. *See e.g.*, United States v. Zamora, 460 F.2d 1272 (9th Cir.) *cert. denied*, 409 U.S. 881 (1972) and United States v. Springer, 460 F.2d 1344 (7th Cir.) *cert. denied*, 409 U.S. 873 (1972).

7. *See e.g.*, United States v. Flack, 20 U.S.C.M.A. 201, 43 C.M.R. 41 (1970); United States v. Robinson, 49 C.M.R. 183 (ACMR 1974).

8. People v. Arthur, 22 N.Y. 2d 325, 292 N.Y.S. 2d 663, 239 N.E. 2d 537 (1968).

9. *See e.g.*, Judge Ferguson's opinion in United States v. Johnson, 20 U.S.C.M.A. 320, 43 C.M.R. 160, 164-65 (1971) [opinion relying upon MANUAL FOR COURTS-MARTIAL, 1969 (Rev. ed.), para. 44h]; United States v. Estep, 19 U.S.C.M.A. 201, 41 C.M.R. 201 (1970).

10. 47 L. Ed. 2d 556 (1976). This case was published in full at 74-6 JUDGE ADVOCATE LEGAL SERVICE 19 (DA Pam 27-76-4, 1976).

11. 22 U.S.C.M.A. 570, 48 C.M.R. 77 (1973).

12. 16 U.S.C.M.A. 629, 37 C.M.R. 249 (1967).

13. Uniform Code of Military Justice, art. 31(d), 10 U.S.C. § 831(d) (1970).

14. *See generally*, Lederer, *Rights Warnings in the Military*, 72 MIL. L. REV. 1 (176).

## *United States v. Graves:* No More Affirmative Waiver?

*By: Major Lawrence J. Sandell, USALSA, Ft. Carson, CO*

May a military judge accede to a defense request not to instruct a jury on uncharged misconduct or possible lesser included offenses reasonably raised by the evidence? In a disobedience of orders case, where the defense is illegality of the orders, may the judge fail to instruct, at the express request of the defense, on the possible defense of mistake of fact raised by the evidence? Once upon a time the answer was yes. Since the U.S.C.M.A. decided *United States v. Graves*,[1] however, it appears that counsel may no longer waive instructional issues.

During Graves' trial for assault with intent to commit murder, there was a great deal of testimony about the accused's drinking. Counsel argued about the effects of intoxication on both the intent to kill and the voluntariness of a confession. The trial judge instructed on intoxication only as it related to the intent to kill, but did not instruct on intoxication as it related to the voluntariness of the confession. The defense neither requested the missing instruction nor objected to its omission, though there was sufficient evidence to raise the issue.[2]

On appeal the United States Court of Military Appeals examined "the effect of the trial defense counsel's failure to request a voluntariness instruction and the corresponding lack of objection to the instructions actually given by the

trial judge." [3] In arguing that the defense waived the instruction, the government relied on *United States v. Meade.*[4] The issue of voluntariness of a confession was also raised by the evidence in *Meade,* but the defense expressly asked the trial judge not to instruct the jury on voluntariness. The U.S.C.M.A. held that defense counsel waived the voluntariness instruction and that the military judge properly acceded to the waiver.[5]

In *Graves* there was no affirmative waiver, and there is ample authority for the court's holding that it was error for the judge not to instruct on the voluntariness issue. The obligation to instruct arises not from a defense request but from the existence of the evidence raising the issue.[6] Under the existing law and the facts of *Graves,* the U.S.C.M.A. properly refused to apply any passive waiver concept.

Up to that point, *Graves* left undisturbed both the prior law and defense counsel's control of trial strategy. Both were then effectively destroyed in the interest of what the court described as the judge's overriding obligation to assure that the accused receives a fair trial. The court unanimously declared:

> Irrespective of the desires of counsel, the military judge must bear the primary responsibility for assuring that the jury properly is instructed. . . . Simply stated, counsel do not frame issues for the jury; that is the duty of the military judge. . . .[7]

The court then did away with an accused's right to waive an instructional issue by expressly overruling any contrary holding in *Meade* and other decisions.[8]

If the judge agrees that an instruction on uncharged misconduct will only reinforce incompetent evidence, may he refrain from giving that instruction? If the trial judge concurs with defense counsel that, in a disobedience case, an instruction on the issue of mistake of fact would seriously undermine the major defense of illegality of the order, may the judge refrain from instructing on both defenses? May a judge still permit a defense counsel to put all his eggs in one basket by acceding to a request not to instruct on lesser included offenses?

The answer to these questions must be no. By overruling *Meade* and imposing a duty on the judge "irrespective of the desires of counsel," the U.S.C.M.A. has effectively removed all discretion in instructional matters from counsel and judges. This is an unfortunate result, and may not have been what the court intended. It was entirely unnecessary for the court's holding in *Graves.* The language may be a reflection of the court's continuing desire to elevate the status of the military judge. The intent is laudable, but the effect is to hamstring both the trial judge and the defense counsel by placing unnecessary restraints on the exercise of their discretion.

On at least two occasions this year, the U.S.C.M.A. has modified its opinions and said, in effect, "We said more than we meant to say." [9] It would be appropriate for the court to again exercise that authority in *United States v. Graves.*

## Notes

1. 23 U.S.C.M.A. 434, 50 C.M.R. 393 (1975).

2. 50 C.M.R. at 395.

3. 23 U.S.C.M.A. at 436, 50 C.M.R. at 395.

4. 20 U.S.C.M.A. 510, 43 C.M.R. 350 (1971).

5. 43 C.M.R. at 354.

6. 50 C.M.R. at 396. *Accord:* United States v. Howard, 18 U.S.C.M.A. 252, 39 C.M.R. 252 (1969).

7. *Id.*

8. *Id.*

9. United States v. Elmore, 24 U.S.C.M.A. 81, 51 C.M.R. 24 (1976); United States v. Jordan, No. 29,592 (U.S.C.M.A. 12 March 1976).

# Legal Assistance Items

*By: Captain Mack Borgen and Captain Stephan Todd, Administrative and Civil Law Division, TJAGSA*

## 1. ITEMS OF INTEREST.

**Legal Assistance—Resource Materials.** Pursuant to Army Reg. 608–50, "Legal Assistance," 22 Feburary 1974, the Legal Assistance Officer [hereinafter LAO] under the traditional program is to provide "all professional functions short of actual court appearance." Para. 4*b*, AR 608–50. Although this authorization is qualified by the express limitations regarding military administrative matters, military criminal matters, and private income-producing activities [para. 8, AR 608–50], and qualified by practical and implied limitations such as the existing caseload and the LAO's personal expertise and qualifications, the scope of the services provided under the military legal assistance program is very broad. To assist the LAO's in meeting this responsibility two texts recently have been prepared by the Administrative and Civil Law Division. The texts are for use by the students at The Judge Advocate General's School and for their subsequent use as practicing military LAOs. The books are designed to provide these military attorneys with textual discussion and with primary and secondary source material relating to the rendition of legal assistance. The two texts are entitled *Legal Assistance* (ACIL–ST–260) (2 Vols.) (March 1976) (546 pp.) and *Selected Readings on Estate Planning* (ACIL–ST–261) (April 1976) (312 pp.). It is hoped that these materials will supplement the many other excellent commercial and governmental publications available to the LAO and will further the constantly improving quality of legal services provided by military LAOs to members of the military community. [Ref: Ch. 1, DA Pam 27–12.]

**Family Law — Divorce — Equitable Distribution of Property — Division of Military Retired Pay.** In the last several years the legal issues attendant to the division of military retired pay incident to a divorce proceeding have been the subject of many appellate cases and have received considerable attention by legal commentators. These cases and articles have been discussed or referenced frequently in prior issues of this column. THE ARMY LAWYER, March 1975, at 25; July 1975, at 34–35; December 1975, at 35; May 1976, at 23. The recent decision of the New Jersey Superior Court's Appellate Division in Kruger v. Kruger, ___ N.J. Super. ___ (App. Div. 1976), 2 FAMILY L. REP. 1089, 2377 (April 13, 1976), is particularly significant and deserves analysis.

Many states now require an "equitable distribution of property" incident to a divorce rather than basing such distribution upon evidence of marital misconduct. This legislative development is consistent with the theory and intent of non-fault statutes. It modifies the common law marital property system and grants equitable power to the court to distribute the "marital property" so as to reflect the spouses' respective economic and noneconomic "contributions" to the marriage and to meet the prospective economic needs of the parties.

By statute in New Jersey all property which has been acquired during coverture is subject to such equitable distribution upon divorce. This definition of property has been interpreted to include pension and retirement benefits to which the husband made contributions during the marriage. Additionally, non-contributory benefits are considered "distributable property" if the husband has a vested right to receive any portion of the employer-paid pension or retirement plan at the time of divorce.

In *Kruger* the defendant-husband was receiving military retired pay at the time of the trial. The court held that such "an interest in a military retirement plan [was] an earned property right which is distributable to the extent acquired during marriage." The significance of this case lies in the fact that although a great majority of the reported decisions involving such division and distribution of military retired pay as a property right have been decided under the principles of community property law, here

a common law jurisdiction adopted the reasoning of those decisions under an "equitable distribution" statute. Although the court did characterize the retired pay as a property right rather than a mere income-flow to the defendant, it did limit the division of the asset. As the court stated:

> In order to insure that distribution be equitable, an order for distribution of regular payments received by a husband from a military retirement system as retired pay or from a disability pension should provide for termination of the obligation to make payment of such benefits upon the death of the wife.

Thus, this case evidences further acceptance of the principle that incident to a divorce military retired pay should be characterized as property if the entitlement to such retired pay has vested. This characterization would be appropriate despite the prior or existing domicile of the spouses in either a common law state which provides for an equitable distribution of property or a community property state. Qualifications may exist to the extent that the retired pay was in part earned prior to the marriage and to the extent that any distribution based upon such characterization would terminate upon the death of the non-military spouse.

In dissent Justice Botter argued in *Kruger* that military retired pay should be treated as income and not as a capital asset. By treating the retired pay as income, the court would thereby retain the power "to alter the amount of alimony and child support according to the needs of the parties." [Ref: Chs. 20, 26, DA Pam 27-12.]

**Consumer Affairs — Preservation of Consumer Claims and Defenses.** The Federal Trade Commission regulation, 40 Fed. Reg. 53506 (18 November 1975), 16 C.F.R. 433, 44 U.S.L.W. 2240 (25 November 1975), providing for the waiver of the holder-in-due-course defense in consumer credit transactions became effective on 14 May 1976. [Cross-reference: *Legal Assistance Items*, THE ARMY LAWYER, Jan. 1976, at 37.] [Ref: Ch. 10, DA Pam 27-12.]

**Family Law — Support of Dependents — Garnishment of Federal Wages.** As reported in the FAMILY LAW REPORTER, the General Accounting Office [hereinafter GAO] has recently released its study and analysis of the Social Services Amendments of 1974, Pub. L. No. 93-647 (Jan. 4, 1975), 88 Stat. 2337. See 2 FAMILY L. REP. 2405 (April 20, 1976). One section of the Social Services Amendments provides for the garnishment of federal wages "to provide child support or make alimony payments." Pub. L. No. 93-647 (Jan. 4, 1975), 88 Stat. 2337 § 459, codified as 42 U.S.C.A. § 659 (1976). The GAO report recommended, *inter alia*, that two parts of this garnishment section be clarified by amending legislation. The report recommends that authority to issue regulations regarding the garnishment provision be specified and that a definition of "legal process" as used therein be added. Any developments concerning these recommendations will be reported in forthcoming issues of this column. [Ref: Chs. 20, 26, DA Pam 27-12.]

**Estate Planning — Wills — Moderate-Sized Estates.** Martin, *The Draftsman Views Wills For a Young Family*, 54 N.C.L. REV. 271 (February 1976). Very rarely has the legal profession focused upon the estate planning needs of families with only moderate-sized estates. Most articles and institutes instead deal with income and estate tax consequences relevant to the planning of large estates. As noted in the above-referenced article this "over-emphasis" continues despite the fact that the "average testator falls into this neglected category." *Id.*, at 271. As stated by Professor Martin:

> This article deals with this large but neglected category of clients and the problems that the attorney should face in preparing their wills. In order to provide opportunity for a focused discussion, the coverage is further refined to clients that are parents in a young family just getting a start in life. The purpose here is to think through the difficult problems and choices involved in counseling these persons about wills and to reach some conclusions about the design their wills typically might take.

*Id.*, at 272. See also Shaffer, *Nonestate Planning*, 42 NOTRE DAME LAW. 153 (1966). [Ref: Chs. 13, 14, DA Pam 27-12.]

## 2. ARTICLES AND PUBLICATIONS OF INTEREST.

**Consumer Affairs — Fair Credit Reporting Act.** DoD Information Guidance Series (DIGS) No. 8E–20 (Rev. 1), "Consumer Protection — Fair Credit Reporting Act," April 1976. [Ref: Ch. 10, DA Pam 27–12.]

**Consumer Affairs — Recent Legislation.** Bragg, *Now We're ALL Consumers! The 1975 Amendments to the Consumer Protection Act*, 28 BAYLOR L. REV. 1 (1976). [Ref: DA Pam 27–12.]

**Consumer Affairs — Credit Transactions.** Comment, *Easy Credit: Promise or Reality*, 11 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 186 (1976). [Ref: DA Pam 27–12.]

**Social Security — Rescission of Army Regulations.** Army Reg. 608–13, "Social Security Disability Benefits," 10 September 1968, and Army Reg. 608–14, "Social Security," 17 October 1963, have been rescinded. *See* Dep't of Def. Information Guidance Series [DIGS] No. 8A–2 (Rev. 3), "Social Security and Services Families," January 1975; No. 8A–42 (Rev. 1), "Estimating Social Security Retirement Benefits," January 1975. *See also* The Army Times Reports, "Social Security Benefits (For Servicemen and Veterans)," February 1974 [Cross-Reference: THE ARMY LAWYER, Feb. 1975, at 25]; Note, *Social Security Retirement Benefits of Military Personnel*, 12 A.F. JAG L. REV. 171 (1970). [Ref: Ch. 39, DA Pam 27–12.]

**Survivor's Benefits — Army Casualty Program.** Army Reg. 600–10, "The Army Casualty System," 15 January 1976 (Superseding Army Reg. 600–10, 29 March 1972). This new regulation "establishes policies and outlines responsibilities and procedures" for the Army Casualty System including, *inter alia*, the casualty reporting system, notification of next of kin (NOK), preparation of letters of sympathy, Survivor Assistance Officers, Inquests and Missing Persons Boards of Inquiry, reports of death of USAR and ARNG members, and the Record of Emergency Data (DD Form 93 and DA Form 41). DD Form 93 (Record of Emergency Data) and VA Form 29–8286 (Servicemen's Group Life Insurance Election) are now available for issue and are authorized for use. Although these forms, when used, replace DA Form 41, DA Form 41 will continue to be utilized until existing supplies are exhausted. [Ref: Ch. 16, DA Pam 27–12.]

**Veteran's Benefits — Summary of Entitlements.** VA–IS–1 Fact Sheet, "Federal Benefits For Veterans and Dependents," 1 January 1976 (57 pp.). This publication is available from the Superintendant of Documents, U.S. Government Printing Office, Washington, D.C. 20402. ($0.95) (Stk. No. 051–000–00087–1) [Ref: Ch. 44, DA Pam 27–12.]

## JAG School Notes

**1. First Commandant Returns.** Major General Charles L. Decker, USA Retired, who established the present Judge Advocate General's School and served as its Commandant from 1951 to 1955, returned after an eight year absence to visit the new school building and address the graduating 24th Judge Advocate Officer Advanced Course. The pleasure of General and Mrs. Decker's visit to the School was marred by an unfortunate accident in which a portion of his left thumb was severed by the closing of an automobile door. Owing to General Decker's hospitalization, his outstanding address (to be published in a forthcoming issue of the *Military Law Review*) was read to the graduates by Major General Lawrence H. Williams. During his visit Major General Decker presented to the School original copies of the 1949 and 1951 Manuals for Courts-Martial, whose development he guided. These copies were autographed by the incumbent Judge Advocates General, the judge advocates who drafted them, and the administrative and clerical staff members of the team. He also presented the School with a set of gold JAGC insignia cast in North Africa in World War II, and the original telegram announcing

American Bar Association accreditation of the School in 1955. Other visitors for the graduation exercises were Rear Admiral Horace B. Robertson, Judge Advocate General of the Navy, and Colonel James King, Deputy Director of the Judge Advocate Division, HQ USMC.

**2. Advanced Class Honors.** Major Anthony H. Gamboa carried off most of the honors in the 24th Advanced Class ceremony on 28 May 1976. For having the highest overall class standing he received an Award for Professional Merit from the American Bar Association. The US Court of Military Appeals' Judge Paul M. Brosman Award honored his highest standing in criminal law subjects and his high standing in administrative and civil law subjects was recognized by an award from the Judge Advocates Association. An award for the highest standing in International Law went to Captain Charles R. Fulbruge, III. The highest standing in Management for Military Lawyers was earned by Major Robert M. McBride, USMC. Tied for presentation of the most outstanding theses were Captains Stephen F. Lancaster and Jeffrey A. Sayles. The Foundation of the Federal Bar Association Award for excellence in Procurement Law went to Captain Stephen I. Lancaster. Also receiving academic honors were Major Eugene A. Steffen, USMC, Captain Christian F. Vissers, Captain Vincent P. Yustas, Major Edward L. Colby, Jr., Captain J. P. Manning, and Major Anthony Mielczarski, Jr., USMC. The distinguished graduates received awards donated by the Public Law Education Institute, Michie Company, West Publishing Company, Foundation Press and Clarendon Press.

The class gift to the School was a four-foot replica of the School's distinctive insignia, designed to be placed above the stage in the School's largest classroom. Major Tsao Ta Cheng, Republic of China, presented the School a plaque from his Government's Military Law Bureau. Captain Koyanagi Kazuhiko, Japan Ground Self-Defense Forces, presented the School with a replica of a Samurai warrior's helmet symbolizing honor, bravery, and loyalty.

**3. Copies of the JAG Corps History Available.** The School and some Judge Advocate Offices have received requests for *The Army Lawyer: A History of the Judge Advocate General's Corps, 1775–1975,* from the public. While stockage at the School is insufficient for such distribution, the History is available to the public from the Superintendent of Documents, US Government Printing Office, Washington, DC 20402. The stock number is 008–020–00563–1, and the price is $6.10. Requests from the public should be referred to the Superintendent of Documents.

**4. Armed Forces Week, 1976.** During Armed Forces Week, 8–15 May, the School increased its normal community activities. Eight members of the faculty gave talks concerning the School and military law to the city and county high schools and to such service organizations as the Lions Club and Kiwanis International. An Armed Forces Week luncheon was sponsored at the School by the Thomas Jefferson Chapter of the Association of the United States Army. Principal speaker at the luncheon was Professor Robert S. Wood of the University of Virginia who spoke on the subject of Detente, Intervention and American foreign policy. The week concluded with an open house for the University and Charlottesville community at the new Judge Advocate General's School building.

**5. Birthday Celebration for Hugo Grotius.** Festivities were held at The Judge Advocate General's School Consolidated Club on 9 April 1976, the eve of the 393d birthday of Huigh de Groot popularly known as Grotius). The occasion was sponsored by the School's International Law Division in honor of Grotius, the "Father of International Law." During the evening an urn reportedly containing the "essence of Grotius" was placed in a prominent spot in the Club and a poem dedicated to his memory. The staff, faculty and students proceeded to toast the occasion.

Grotius was born at Delft, Holland, on 10 April 1583. He spent his life as a jurist, writer, poet and statesman, but is best remembered for his writing, *De Jure Belli ac Pacis* (On the Law of War and Peace). This work so influenced writers who followed him that Grotius gained

his title as "Father of the Law of Nations." During his political career, Grotius served as Attorney General of Holland and later as a representative from the City of Rotterdam. When Holland became embroiled in religious and political controversy, Grotius' patron, Johan Van Oldenbarnevelt the Grand Pensioner, was sentenced to beheading. Grotius was, without due process, incarcerated in a castle dungeon. It is written that Grotius was then miraculously spirited out of the castle, hidden in a basket, and taken to France. In France, Louis XIII granted Grotius a pension allowing him to continue writing and actively engage in politics. The King of Swedenlater appointed him Ambassador to France. Grotius was as well known in his day as Henry Kissinger is in our own, and his work lives on to influence international law and the minds of those who practice it.

**6. Landscaping The Courtyard Begins.** A lone weeping birch planted by the University of Virginia earlier this spring stands in the spacious courtyard of the JAG School's new building on the University's North Grounds.

The birch is the first planting in a layout developed by the University, calling for an irregular pattern of walks edged with benches and generously skirted with plantings—azaleas, rhododendrons, dogwood, and other varieties.

Next to be planted are trees provided by the 74th Basic Class and the 15th, 21st and 22d Advanced Classes.

Shrubs and other trees will be planted as further gifts to the Association of the Alumni are received.

**7. Distinguished Visitors.** Among recent distinguished visitors and guest lecturers at The Judge Advocate General's School are the following:

Professor Dennis W. Barnes, Associate Provost for Research and Associate Professor of Environmental Sciences, University of Virginia

MG Julius W. Becton, Jr., Commander, 1st Cavalry Division

LTC Charles J. Birt, IG Briefing Team

Mr. Arthur Burnett, Assistant General Counsel, Civil Service Commission

Ms. Karen Clauss, Associate Solicitor, Department of Labor

LTC Julius Debro, USAR, Professor of Criminology, University of Maryland

Mr. William N. Hedeman, Jr., Assistant General Counsel for Regulatory Functions, Office of the Chief of Engineers

Honorable Hadlai A. Hull, Assistant Secretary of the Army (Financial Management)

Ms. Barbara Greene Kilberg, Associate Counsel to President Ford

Honorable George Marienthal, Deputy Assistant Secretary of Defense for Environment and Safety

Mr. Raphael Mur, Secretary and General Counsel, Grumman Aerospace Corporation, Bethpage, New York

Mr. William L. Robertson, Office of the General Counsel, Department of Defense

CPT William D. Rolfe, Australian Army Legal Corps

COL Bryan S. Spencer, IG Briefing Team

LTC William K. Suter, Staff Judge Advocate, Fort Campbell, Kentucky

MAJ Daniel L. Whiteside, IG Briefing Team

Dr. Nathan T. Wolkomir, President, National Federation of Federal Employees

## JAG DETACHMENTS SUPPORT ROTC

During the period 16 February 1976 to 19 March 1976 officers from the five Omaha JAG Detachments conducted a 15 hour course in military law for senior ROTC cadets enrolled in the University of Nebraska ROTC Program. Classes were conducted at the University of

Nebraska—Lincoln with the following named officers conducting the instruction: LTC David F. McCann, 119th JAG Detachment; Major David W. Kolenda, 121st JAG Detachment; Major Paul M. Brown, 121st JAG Detachment; Major Robert C. Guinan, 132d JAG Detachment; Captain Joseph K. Meusey, 121st JAG Detachment; Captain Michael S. Jones, 11th JAG Detachment; Captain John J. Horan, 119th JAG Detachment; Captain Gregory B. Minter, 119th JAG Detachment; Captain Steven F. McWhorter, 112th JAG Detachment; Captain Daniel J. Duffy, 121st JAG Detachment.

The support rendered by these officers made the course a more meaningful educational experience for all those attending and is representative of the excellent assistance being provided to the ROTC by many JAGC Reserves.

## CLE News

**1. Advanced Class Theses.** Copies of any of the theses listed are available as a loan. To obtain a thesis write to "The Law Library, University of Virginia, School of Law, ATTN: Inter-Library Loans, Charlottesville, Virginia 22901." In order to obtain a loan copy you must include "the full title, the author's name and rank, 24th Advanced Class, 1976."

Captain Larry Anderson
*Consideration in Government Contracts: Benefit or Detriment?*

Captain Paul E. Artzer
*Military Nonappropriated Fund Instrumentalities and Federal Immunity From State Regulation*

Captain Patrick Brown
*Use of Polygraph Results in Courts-Martial*

Major Edward Colby
*Should COMA Be an Article III Court?*

Captain Louis Davis
*Management of JA Requirements in Order to Accomplish the Legal Services Mission in the Field*

Lieutenant Commander Nicholas DeCarlo
*All Writs Power of the Military Judge*

Captain Ashby Dickerson
*Class Action Litigation in Actions Challenging Military Activities*

Captain Charles R. Fulbruge
*On-Post Commercial Solicitation*

Major Anthony Gamboa
*Environmental Law and Federal Land Use*

Major Elmer Gates
*Defense of Entrapment*

Captain Steve Gibb
*Applicability of the Law of Land Warfare to Army Aviation Forces*

Captain Michael E. Gillett
*The Doctrine of Equitable Estoppel Applied Against the Government*

Captain Adrian Gravelle
*Federal Tort Collection Act Legislation*

Captain Normand Hamelin
*The NATO SOFA Supplementary Agreement and the Embassy Judge Advocate*

Major John Higley
*The Right of Privacy and Military Personnel Security Investigations*

Major Edward Klatte
*International Disaster Relief—A Study of Law and Organization*

Captain Kazuhiko Koyanagi
*Article 9 and the Right of Self-Defense: The Sapporo Decision*

Captain Steven Lancaster
*Disruption in the Courtroom: The Troublesome Defendant*

Captain Charles Lance
*A Criminal Punitive Discharge—Effective Punishment?*

Captain Garey Laube
*The Disciplinary Holding Company: An Adjunct to Pretrial Confinement*

Captain John Long
*The "Service Couple" and the Army—A Selected Overview*

Captain Jay P. Manning
*A Survey of the Judicial Systems Applicable to the Trust Territory of the Pacific Islands*

Captain Alexander Mather
*Operation NEW LIFE: Days of Chaos*

Major Robert McBride
*Tenure: Its Effect Upon the Discharge of Persons from the Military*

Major Anthony Mielczarski
*Mistrials in Court-Martial Practices Under the UCMJ*

Captain Jerome Mosier
*Consumer Protection in the Military*

Major John Nichols
*Termination Inventory: Liability or Asset?*

Captain Matt Reres
*Standards of Competency For Attorneys Practicing Before Military Administrative Boards*

Captain Arthur L. Reynolds
*The Government's Requirement to Produce Defense-Requested Witnesses*

Captain George Reynolds
*Truth Serum, Narcotics Investigation, Narco Analysis and the Scientific Search for Truth*

Major Elden Roberts
*The Presidential Clemency Board*

Captain Jeffrey Sayles
*The Legal Force and Effect of Command Regulations*

Major Eugene Steffen
*Extraterritorial Jurisdiction and the Trial of Civilians by Military Authorities*

Major Charles Stockstill
*Fairness of Trial in Foreign Courts*

Major Larry J. Strom
*Impact of "No Fault" Insurance Legislation on the US Government*

Major Ta Cheng Tsao
*A Synoptic Introduction of Civilian and Military Legal Systems of the Republic of China*

Captain Carlos Vallecillo
*Compulsory Process: Does the 6th Amendment Require the Result Reached in U.S. v. Daniels?*

Captain Christian Vissers
*Military Assistance to Civil Authorities*

Major John Weber
*Energy Conservation Through Formally Advertised Military Procurement*

Major Roy Whitehead
*The Doctrine of Military Necessity*

Major Herbert Williams
*The Army JA as an International Law Instructor: Dissemination of the 1949 Geneva Conventions*

Captain Vincent Yustas
*The Burden of Proof on the Issue of Mental Responsibility in Criminal Cases in the Military*

Captain Edward Ziegler
*Impact of U.S. v. Catlow*

**2. TJAGSA Courses (Active Duty Personnel).**

June 21–July 2: 1st Military Justice II Course (5F–F31).

June 21–July 2: 1st Military Administrative Law Course (5F–F20).

June 28–July 2: 2d Criminal Trial Advocacy (5F–F32).

July 11–24: USAR School BOAC Phase VI, Procurement Law and International Law, Resident/Nonresident Instruction (5–27–C23). Active duty personnel must obtain approval to attend this course from the Academic Dept. at TJAGSA.

July 12–16: 25th Senior Officer Legal Orientation Course (5F–F1).

July 19–August 6: 15th Military Judge Course (5F–F33).

**3. TJAGSA Courses (Reserve Component Personnel).**

June 6–19: Reserve Component Training JAGSO Teams.

June 21–July 2: 1st Military Justice II Course (5F–F31).

June 21–July 2: 1st Military Administrative Law Course (5F–F20).

July 11–16: USAR School BOAC Procurement Law Phase VI, Resident/Nonresident Instruction (5–27–C23).

July 11–24: USAR School BOAC Phase VI, Procurement Law and International Law, Resident/Nonresident Instruction and CGSC.

July 19–24: USAR School BOAC International Law Phase VI, Resident/Nonresident Instruction (5–27–C23).

**4. Civilian Sponsored CLE Courses.**

**July**

6–9: LEI, Institute for Legal Clerks, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483.

6–16: National College of District Attorneys, Summer Resident Program, Executive Prosecutor Course, Houston, TX. Contact: Registrar, NCDA, College of Law, University of Houston, Houston, TX 77004.

8–9: Federal Publications, Terminations of Government Contracts, Washington, DC. Contact: Seminar Division, Federal Publications Inc, 1775 K St. NW, Washington, DC 20006. Phone: 202–337–8200.

11–16: ALI-ABA, Environmental Litigation, University of Colorado School of Law, Boulder, CO. Contact: Director, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104.

11–18: Association of Trial Lawyers of America, National College of Advocacy, University of Nevada, Reno, NV. Contact: The Association of Trial Lawyers of America, CLE Division, 20 Garden St., Cambridge, MA 02138. Phone: 617–868–6900.

11–23: American Academy of Judicial Education, Trial Judge's Academy, University of Colorado, Boulder, CO. Contact: National Conference Coordinator, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202–783-5151.

12–16: Federal Publications, Government Construction Contracting, Las Vegas, NV. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

18–13 August: National College of the State Judiciary, Regular Four Week Session, University of Nevada, Reno, NV. Contact: Dean, National College of the State Judiciary, Judiciary College Bldg., University of Nevada, Reno, NV 89507. Phone: 702-784-6747.

18–30: National College of the State Judiciary, New Trends in the Law—The Trial and Public Understanding, University of Nevada, Reno, NV. Contact: Dean, National College of the State Judiciary, Judiciary College Bldg., University of Nevada, Reno, NV 89507. Phone: 702-784-6747.

20–22: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483.

25–30: American Academy of Judicial Education, Trial Judge's Writing Program, University of Colorado, Boulder, CO. Contact: National Conference Coordinator, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151.

26–30: Federal Publications, Concentrated Course in Government Contracts, Los Angeles, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

27–29: LEI, Seminar for Attorney-Managers, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202-254-3483.

29–30: Federal Publications, Terminations of Government Contracts, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200.

**August**

1–13: National College of the State Judiciary, Regular Two Week Residence Session [Adult Misdemeanant Cases, Evidence, Criminal Law, Sentencing, Search and Seizure], Judicial College Bldg., University of Nevada, Reno, NV. Contact: Judge Ernst John Watts, Dean, National College of the State Judiciary, Judicial College Bldg., University of Nevada, Reno, NV 89507. Phone: 702-784-6747. Cost: $525.

2–4: Federal Publications, Construction Contract Modifications, Washington, DC. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: $400.

5–8: National Association of Women Lawyers, Annual Meeting, Atlanta, GA.

5–12: ABA, Annual Meeting, Atlanta, GA.

8–11: American Academy of Judicial Education, Criminal Law III [Right to Counsel, Effective Assistance of Counsel, Speedy and Public Trial, Insanity Defense and Competency to Stand Trial, Double Jeopardy, Law and Psychology], New England Center for Continuing Education, Durham, NH. Contact: National Conference Coordinator, American Academy of Judicial Education, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151. Cost: $215.

8–20: American Academy of Judicial Education, Trial Judges Academy [The Judicial Function and the Judge's Role, How to Move the Cases, Search and Seizure, Inherent Powers, Pretrial Identification, Standards of Indigency, Confessions, Problem Cases, Community Relations, Judicial Ethics, Bail, How to Conduct a Preliminary Hearing, Plea Taking, Plea Bargaining, Scientific Evidence in Traffic Cases, Laws of Evidence, How to "Find the Facts," Contempt and Disruptive Tactics, Sentencing, Body Language, Videotaped Mock Trials], University of Virginia, Charlettosville, VA. Contact: National Conference Coordinator, American Academy of Judicial Education, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151. Cost: $540.

11–14: American Academy of Judicial Education, Evidence III [Relevancy, Authentication, Judicial Notice], New England Center for Continuing Education, Durham, NH. Contact: National Conference Coordinator, American Academy of Judicial Education, Suite 539, Woodward Bldg., 1426 H St. NW, Washington, DC 20005. Phone: 202-783-5151. Cost: $215.

15–21: International Bar Association, Biennial Conference, Stockholm, Sweden.

15–22: Association of Trial Lawyers of America, National College of Advocacy [Getting the Facts, The Jury, The Opening Statement, Pot Pourri, Psychology in the Courtroom, The Art of Persuasion], Suffolk Law School, Boston, MA. Contact: Director of CLE, The Association of Trial Lawyers of America, 20 Garden St., Cambridge, MA 02138. Phone: 617-868-6900.

16–20: Federal Publications, Government Contract Claims, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: $525.

30–1 Sept.: Federal Publications, Construction Contract Modifications, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc, 1725 K St. NW, Washington, DC 20006. Phone: 202-337-8200. Cost: $400.

## ARMY PATENT ACTIVITY

*By: LTC H. M. Hougen, Patents Division, Office of The Judge Advocate General, Department of the Army*

Among lawyers generally, both in and out of the Army, there is an aura of mysticism surrounding patents and a general lack of understanding of the Army's role in patent management. This discussion is intended to provide information for the Army practitioner who occasionally needs to cope with a patent problem and to dispel some of that mysticism.

**Characteristics of patents.**

Patents are property. In return for his creation of a useful and novel idea, the United States Government gives the inventor or his assignee a privilege of excluding everyone else from making, using, or selling his invention in this country for the term of 17 years. This privilege is enforceable by the Federal courts, just as any other property right may be judicially protected against trespass. Assuming that his invention can be practiced without infringing some earlier, dominant right, the patent owner can practice his own invention exclusively and sell the resulting product to obtain his profits. He may also sell or license that right to another, using his access to judicial protection of his exclusive rights to bargain for his profits.

Patents are issued by the United States Patent and Trademark Office, which is a part of the Department of Commerce, after a complex, highly structured process called patent prosecution. Because of the complicated technology involved in converting the abstract ideas of the inventor and structural embodiments of the invention into a written instrument which clearly expresses the metes and bounds of the legally enforceable right and because of rules of practice unique to patent prosecution, the Patent and Trademark Office limits patent prosecution practice to those determined by examination to be qualified to represent applicants. Once the patent issues, the property rights are similar to other forms of property. Contract, tax, and other property law problems can be resolved by lawyers who are not specially admitted to practice at the Patent and Trademark Office.

**Government interest in patents.**

Outright ownership of patent rights is not absolutely essential to the operation of the Government. Under a theory of eminent domain, it can practice any privately owned invention at will without fear of an injunction. The Government will be liable for the fair royalty due the patent owner, and such settlements can be for vast amounts. However, it is a matter of policy not to intentionally infringe privately owned rights, and various statutes and regulations automatically make the Government the owner of certain rights to inventions. More importantly, the Government is entitled to patent rights that arise from the expenditure of its money; it is in the interests of the various agencies to perfect those rights to preclude others from obtaining the rights and later compelling the Government to pay royalties on the same invention. As a result, the Government has obtained a vast portfolio of patents. The Army alone owns 5,500 patents and holds license rights to many others.

The military departments have traditionally been concerned with patent rights primarily as protection against liability to others. Unlike private industry, they had no financial motivation to prevent the general public from using the technology for free. Nonexclusive licenses were available from the military departments for the asking, and no one was enjoined from using the inventions owned by the Government, even without a license. Unfortunately, this relaxed attitude did not necessarily result in commercial development of those inventions. Neither the general public nor the various purchasing agencies could benefit from the ready availability of goods or lower costs resulting from mass production unless someone was willing to invest the time and money necessary to commercially develop the processes involved. After 30 years of acrimonious debate, the Government agencies, including the Army, have been directed and are now preparing to offer exclusive, royalty-bearing licenses to attract risk capital when necessary to obtain commercial development of Government-owned inventions.

**Acquisition of patent rights.**

The Army acquires patent rights from many sources. Most are derived from the multibillion dollar research and development program involving private contractors and in-house laboratories. Concentrated effort to solve technical problems results in the disclosure of many potentially patentable ideas which may have been the intentional end product of the research, a necessary step along the way to a solution, or an incidental byproduct. Research contracts particularly are monitored to assure that all such inventions are reported for a determination of ownership rights.

Military and civilian employees are another source of inventions. The clerk, repairman, or engineer with an idea for solving a problem or making his job easier may have made a patentable invention. The Army may have a shop right or all rights in that invention. It may obtain title and apply for a patent to be awarded by the Government or obtain only a license and leave the remainder of the rights with the inventor. If there is sufficient official interest in the invention, the Army may actually prosecute the patent and pay filing and issue fees on behalf of the individual owner-inventor. All such inventions must be screened to determine and assert the Government's rights, first by the Army and finally by the Commissioner of Patents and Trademarks.

The Army derives patent rights from international agreements, such as joint research activities or information exchange programs. Under informal agreements with the defense agencies in Canada and Great Britain, the Army prosecutes patents in the United States on behalf of the foreign governments in inventions owned by those governments and of interest to the Army and receives in return licenses to practice the inventions.

The Army can obtain license rights to practice inventions owned by private individuals, to broaden its competitive source of supply or prospectively to avoid having the amount of royalties later determined by judicial process. Licenses are obtained routinely as part of the settlement of infringement actions. Other licenses can arise as part of the settlement of interference proceedings, where two or more inventors seem to have invented the same thing at about the same time; during quasi-judicial action to determine which party is entitled to the patent rights, the litigants frequently agree to cross-license each other and lessen the risk of the outcome.

Lastly, people give patent rights to the Government gratuitously, motivated by patriotism or otherwise.

**Patent prosecution.**

These various patent rights usually come to light in the form of invention disclosures. The disclosures are reviewed by technical personnel who decide whether the Army or another agency has any interest in or possible use for the invention. If there is actual technical interest, the disclosure is reviewed by patent lawyers or advisors for patentability. To be patentable, the invention must be new and useful, advancing knowledge in a way that would not be obvious to a person skilled in the art—the patent law relative of a "reasonable man"—who knows everything about a given field of knowledge. This determination requires a state-of-the-art search through technical journals and previous patents issued in the United States and in foreign countries to discover the extent of prior knowledge about a given art. To ease the burden of hunting through several million documents, the Patent and Trademark Office has indexed its material into 86,000 classification categories. When all, hopefully, of the prior art has been located, it is compared with the disclosed invention to see if the invention is distinct enough to warrant further action.

Patent applications must be filed in the name of the inventor, so the first step in actual filing is to obtain a power of attorney and necessary assignment or license documents from the inventor or joint inventors. An application, which fully discloses the invention, describes how to make and use the invention, and precisely claims the invention, is prepared and filed at the Patent and Trademark Office. Patent prosecution may take several years as a case moves through the administrative process and judicial review. The system retains some vestiges of common law pleading—an omission or error in the application may curtail patent rights or eventually invalidate the patent.

**Litigation and claims.**

As a major user of goods, particularly those involving such new technology as weapons systems, electronic equipment, and medicines, the Army sometimes infringes private patent rights. The military departments are authorized to administratively settle infringement claims, and settlement figures may be in the millions of dollars. Each claim generates a technical search to determine whether the invention is being used somewhere in the Army. It can be rela-

tively simple to screen a dozen possible helicopter rotor designs; analyzing several hundred models of wheel bearings would be much more difficult. If it is determined that the Army has made or used the invention, it becomes necessary to evaluate the claim in light of possible factual and legal defenses. Some of these defenses are unique to patent enforcement cases, including patent misuse, fraud on the patent office, and unusual antitrust aspects of patent property.

Patent owners can also sue for damages in the Court of Claims, either initially or following an unsatisfactory attempt to settle a claim administratively. The Department of Justice represents the Government, but it draws heavily upon the expertise of Army patent lawyers and their proximity to technical experts to obtain evidence, develop lines of defense, and provide assistance in defending such suits. A given case might last for many years. The Army is currently involved in about 50 cases at the Court of Claims or on appeal, and two of these have resulted in trial courtjudgments exceeding $50 million.

**Related activities.**

Historically, those who work with patents also work with the many other forms of intellectual property, including copyrights, trademarks, trade secrets, computer software, and technical data. There is a continuing requirement to register trade marks, handle copyright infringment problems, and protect privately owned trade secrets in the possession of the Army from improper disclosure, particularly in the face of discovery attempts under the Freedom of Information Act.

The procurement process, both in research and development contracts and normal purchase contracts, is closely related to the management and use of patent rights. Section IX of the Armed Services Procurement Regulation is devoted exclusively to intellectual property. Most contracts have clauses concerning the allocation of rights, authorization and consent to infringement of private patent rights, obligations of the contractor to indemnify the Government, or royalty reporting and adjustment requirements.

Costly research efforts may well be devoted accidentally to an effort to discover something that is already known but obscure. It is futile to reinvent the wheel. One tool useful to avoiding the waste of research money is the state-of-the-art search, like that made to determine patentability. Such a search can obviate the need for a given program or at least provide better information for a starting point for the research.

All patent applications are reviewed by the Patent and Trademark Office for possible connection of the invention to the national defense. Those with apparent security problems are referred to the appropriate military agency for a decision whether to impose a secrecy order. Such an order prevents foreign filing of a private patent application and prevents the issuance of a United States patent, at least until the terms of the order are modified or the order is revoked. Once the patent actually issues, all secrecy is lost by the act of general publication of the patent instrument; there is no such thing as a secret patent. The owner of the rights to the invention then has a valid claim against the Government for damages resulting from the imposition of the secrecy order.

Mutual agreements with several allied countries provide for assistance in maintaining secrecy over inventions which affect the national security of one of the countries involved. The Army has traditionally been the focal point for secrecy orders and other invention security activities of the military departments and related agencies, for both domestic and international matters.

**Conclusion.**

Patent property constitutes an important asset of the Army of substantial financial value which can have far-reaching effect on the cost of goods procured and the availability of technology for public use. In view of the provisions of law and the research efforts of the Army, the number of patents in the Army portfolio will remainlarge. The Army will continue to vie with the corporate giants in the volume of patent activity.

The management of these assets raises many and varied legal questions, both in formulation of policy and in the daily use of the property in the field. Those questions are always interesting and frequently complicated. A first source of information is AR 27-60, Legal Services—Patents, Inventions, and Copyrights. Another source is Part Twelve of the *Legal Assistance Handbook*. If you have a problem involving patents or other intellectual property, call the Patents Division, Office of The Judge Advocate General. And, if you discover the drug to cure all human ailments or a method of heating homes by the friction of the Earth's rotation, we will help you share your knowledge with the world to the mutual benefit of you and mankind.

## Professional Responsibility

*From: Criminal Law Division, OTJAG*

The OTJAG Professional Ethics Committee was recently asked to review two cases in which the same counsel defended the accused at trial and later assisted him in a petition for relief under Article 69, UCMJ. In support of the petitions, the counsel asserted that their clients had been denied effective representation by them at trial. In one case, the reason was an alleged physical condition affecting counsel at trial. He did not raise any question about his capacities at trial, and in fact conducted a vigorous defense. In the other case, the counsel alleged in essence that he lost because of his own tactical decisions at trial. The Committee perceived an inherent conflict of interest when a counsel on appeal raises and passes judgment on his competence at trial. In order to raise the issue, he must damage his own reputation. The Committee's findings on this issue conclude:

> The Code of Professional Responsibility is not violated by such an action on the part of an attorney. Indeed the Code's Disciplinary Rules could be violated if, to protect his own interests, an attorney failed to raise, or precluded his client from raising, such an issue. The point is, however, that an attorney should not be placed in the position of having to grapple with this conflict at all. It is the unanimous view of the Ethics Committee that when an attorney is faced with the issue, on appeal, of his own incompetence or inadequacy, whether he or his client raises that issue, the attorney should inform his client of the conflict of interest, disassociate himself from further activity as counsel, and another attorney should be appointed to assist the client in raising or deciding not to raise the issue. The original defense counsel should be free to deal at arm's length thereafter with the new attorney in developing the issue of counsel competence.

## JUDICIARY NOTES

*From: U.S. Army Judiciary*

**Recurring Errors And Irregularities**

1. April 1976 Corrections by A.C.M.R. of Initial Promulgating Orders:

*a.* Failing to indicate that trial was by military judge alone—3 cases.

*b.* Failing to indicate the number of previous convictions considered at the end of the SENTENCE paragraph—2 cases.

2. SJA offices in the field should assure that the date an accused receives a copy of the A.C.M.R. decision and the date that he submits his petition through military channels to the Court of Military Appeals for a grant of review is to be placed on the petition when it is forwarded to the Office of the Clerk of Court. This is necessary in determining whether the accused's petition for review has been filed within the thirty day time period required for filing such a petition.

3. *Records of Trial.* When the original record of trial does not accompany an application for relief

under Article 69, UCMJ, the usual procedure is to obtain the record from the appropriate repository. In a number of instances, the original special court-martial record could not be located. For example, one SJA advised JAAJ-ED that a second copy had been reproduced and sent to the accused, but he could not find the original record. Attention is invited to the provisions of AR 340–2 and AR 340–18–4 pertaining to the retention and retirement of court-martial files. SJA's should initiate necessary action to assure that original records of trial by summary and special courts-martial (non-BCD) are properly filed, stored, and adequately secured.

4. *Applications for Relief.* Judge advocates assisting applicants should note that a new trial may be granted only under Article 73, UCMJ. The relief available under Article 69, UCMJ, is vacation or modification of the findings of guilty or sentence, or both, on the ground of newly discovered evidence, fraud on the court, lack of jurisdiction over the person or offense, or error prejudicial to the substantive rights of the accused. TJAG is without authority to act solely upon clemency factors. A clear, concise, and correct statement of the relief requested should be set forth in Item 13 of the application (DA Form 3499).

5. *Supervisory Review.* Review of records of trial pursuant to Article 65(c), UCMJ, paragraph 94, MCM 1969 (Rev.), and paragraph 2–24*b*(4), AR 27–10, is the responsibility of a judge advocate. Accordingly, a commissioned officer who is attending the Funded Legal Education Program or the Excess Leave Program is not empowered to sign the stamped notation on the record and the promulgating court-martial order to show that review has been completed and that the case is final in law.

## Examination of Records of Trial by Defense Counsel

The Judge Advocate General desires SJA's to assure adequate procedures for making records of trial available to defense counsel for review (paragraph 82*e*, MCM, 1969 (Rev.)) so that he may prepare an article 38(c) brief if he desires. Usually it is possible to provide military defense counsel with one of the regularly prepared copies of the record for examination and correction of reporter errors prior to authentication. This practice, followed by most SJA's, should be continued. SJA's should afford military defense counsel a reasonable time in which to examine a copy of the record prior to authentication. This is not an extra copy for defense retention. It is one of the copies required by paragraph 49b(2), MCM, 1969 (Rev.) and must be returned prior to authentication. *United States v. Goode*, 23 U.S.C.M.A. 367, 50 C.M.R. 1, 75–4 JALS 7 (1975), requires that a copy of the post-trial review be served on defense counsel prior to the convening authority's action. A copy of the record of trial should accompany the post-trial review even though defense counsel may have previously examined the record. Adherence to this procedure will insure that defense counsel are given full opportunity to submit article 36(c) briefs as well as to fulfill their *Goode* responsibilities.

A problem area is service of the post-trial review and record when the accused is represented by civilian and military counsel. Although the civilian attorney heads the defense, military attorneys are frequently in a better position to examine the record of trial and post-trial review. Suggested procedure is for SJA's to request that military defense counsel formally apprise them which attorney is going to conduct the *Goode* review. The replies should be maintained with the records of trial. For purposes of appellate review, in cases where military counsel will conduct the review, the staff judge advocate can proceed with post-trial processing as if there were no civilian counsel. If civilian counsel is to conduct the review, the record of trial and SJA review may be forwarded directly to him, certified mail, return receipt requested, together with a brief letter. To avoid allegations of giving misleading advice, the letter should be limited to (1) a statement that the record of trial and SJA review in the case are inclosed for review pursuant to *United*

*States v. Goode*, 23 U.S.C.M.A. 367, 50 C.M.R. 1 (1975) (the full case citation should always be included), (2) a request that the inclosures be returned no later than five days after receipt, and (3) a statement that a written request for additional time to complete the review can be submitted through the SJA to the convening authority. This procedure of direct mailing is also recommended in cases where the accused is represented solely by civilian counsel. In each instance the report would have to be returned as it is a required copy. The accused's copy is for his personal retention ultimately.

SJA's should review and, where necessary, modify their administrative procedures to assure defense opportunities to review the record of trial prior to action by the convening authority.

Further information on *United States v. Goode* is located at THE ARMY LAWYER, Nov. 1975, at 13 and THE ARMY LAWYER, Dec. 1975, at 36. The decision was construed in *United States v. Austin*, 51 C.M.R. 16, 75-7 JALS 17 (1975).

## Current Materials Of Interest

### Articles

The MILITARY LAW REVIEW, *Bicentennial Issue* commemorates the 200th anniversary of the JAG Corps. This special edition contains reprints of 17 articles which have significantly influenced the development and administration of military law. The issue contains the following articles:

Henry Wager Halleck, Military Tribunals and Their Jurisdiction. 5 *American Journal of International Law* 958 (1911)

James Stuart-Smith, Military Law: Its History, Administration and Practice. 85 *Law Quarterly Review* 478 (1969)

S. T. Ansell, Military Justice. 5 *Cornell Law Quarterly* 1 (1919)

Earnest L. Langley, Military Justice and the Constitution—Improvements Offered by the New Uniform Code of Military Justice. 29 *Texas Law Review* 651 (1951)

Charles Fairman, The Supreme Court on Military Jurisdiction: Martial Rule in Hawaii and the Yamashita Case. 59 *Harvard Law Review* 833 (1946)

Gordon D. Henderson, Courts-Martial and the Constitution: The Original Understanding. 71 *Harvard Law Review* 293 (1957)

Frederick Bernays Wiener, Courts-Martial and the Bill of Rights: The Original Practice. 72 *Harvard Law Review* 1 and 266 (1958)

Earl Warren, The Bill of Rights and the Military. 37 *New York University Law Review* 181 (1962)

Joseph E. Ross, The Military Justice Act of 1968: Historical Background. 23 *JAG Journal* 125 (1969)

Hamilton DeSaussure, The Laws of Air Warfare: Are There Any? 12 *JAG Law Review* 242 (1970)

Albert J. Esgain and Waldemar A. Solf, The 1949 Geneva Convention Relative to the Treatment of Prisoners of War: Its Principles, Innovations, and Deficiencies. 41 *North Carolina Law Review* 537 (1963)

Michael Francis Noone, Legal Problems of Non-Appropriated Funds. *Hearings on S.3163 Before the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on the Judiciary*, 90th Cong., 2d Sess., p. 201 (1968)

Richard R. Baxter, So-Called 'Unprivileged Belligerency': Spies, Guerrillas, and Saboteurs. 28 *British Year Book of International Law 323 (1951)*

Toxey H. Sewell, The Government as a Proprietor of Land. 35 *Tennessee Law Review* 287 (1968)

Detlev F. Vagts, Free Speech in the Armed Forces. 57 *Columbia Law Review* 187 (1957)

Kenneth J. Hodson, Military Justice: Abolish or Change? 22 *Kansas Law Review* 31 (1973)

Daniel J. Wacker, The 'Unreviewable' Court-Martial Conviction: Supervisory Relief Under the All Writs Act from the United States Court of Military Appeals. 10 *Harvard Civil Rights-Civil Liberties Law Review* 33 (1975)

Labor Lawyers now have an additional law review, the INDUSTRIAL RELATIONS LAW JOURNAL. Publication began in May 1976. Volume 1 Number 1 of the INDUSTRIAL RELATIONS LAW JOURNAL was published in Volume 64 Number 3 of the CALIFORNIA LAW REVIEW. Subscriptions are $19.50 for four issues. Contact: Industrial Relations Law Journal, Subscriptions, Boalt Hall, Room 1, University of California, Berkeley, CA 94720.

**Other Articles of Interest Are:**

Poydasheff, *Military Justice A Reinforcer of Discipline*, NAVAL WAR COLLEGE REV., Winter 1976, at 76. By Colonel Robert S. Poydasheff, JAGC, U.S. Army.

Tyler, *Goldfarb v. Virginia State Bar: The Professions Are Subject to the Sherman Act*, 41 MISSOURI L. REV. 1 (1976).

Alexander, *The Application and Avoidance of Foreign Law In The Law of Conflicts*, 70 NW. U.L. REV. 602 (1975).

Note, *Post-Conviction Review in the Federal Courts for the Servicemember Not in Custody*, 73 MICH. L. REV. 886 (1975).

Note, *National Security and the Amended Freedom of Information Act*, 85 YALE L.J. 401 (1976).

Comment, *Privacy: The Search for a Standard*, 11 WAKE FOREST L. REV. 659 (1975).

Note, *On Camera—The Advent of the Video Tape Trial*, 40 ALBANY L. REV. 367 (1976).

Cundick, *The Law of the Sea: An Army Perspective*, MIL. REV. Mar. 1976, at 50. Major Ronald P. Cundick is the Staff Judge Advocate, U.S. Army, Berlin.

**Book**

ADDLESTONE & HEWMAN, ACLU PRACTICE MANUAL ON MILITARY DISCHARGE UPGRADING (Rev. ed. 1975). Contact: ACLU Literature Dept., 22 E. 40th St., New York, NY 10016. Cost: $10.00.

## JAGC Personnel Section

*From: PP&TO, OTJAG*

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| CPT Michael E. Gillett | 24th Advanced Course | USALSA, Falls Church, Virginia |
| CPT Fitzhugh L. Godwin | Office of The Judge Advocate General | 25th Advanced Course |
| CPT Adrian J. Gravelle | 24th Advanced Course | Staff & Faculty, TJAGSA |
| CPT James F. Gravelle | Fort Gordon, Georgia | 25th Advanced Course |
| CPT William R. Hagan | Fort Bragg, North Carolina | 25th Advanced Course |
| CPT Patrick K. Hargus | Thailand | Fort Lewis, Washington |
| CPT John A. Henningsen | Fort Rucker, Alabama | Fort Leavenworth, Kansas |
| CPT James R. Hill | Europe | USALSA, Falls Church, Virginia |
| CPT Lance K. Hiltbrand | Europe | 25th Advanced Course |
| CPT Gary L. Hopkins | 24th Advanced Course | Staff & Faculty, TJAGSA |

| *NAME* | *FROM* | *TO* |
|---|---|---|
| CPT Richard J. Hough | George Washington University | Office of The Judge Advocate General |
| CPT John R. Howell | USALSA with station Fort Knox, Kentucky | 25th Advanced Course |
| CPT Arthur L. Hunt | Fort Sheridan, Illinois | 25th Advanced Course |
| CPT Walton M. Jeffress | George Washington University | Office of The Judge Advocate General |
| CPT Robert B. Kirby | Office of The Judge Advocate General | 25th Advanced Course |
| CPT Richard W. Krempasky | Fort Benning, Georgia | Fort Drum, New York |
| CPT Thomas M. Kullmann | Fort Knox, Kentucky | 25th Advanced Course |
| CPT Harry L. Lamb | Europe | Arlington Hall Station, Virginia |
| CPT Steven F. Lancaster | 24th Advanced Course | Staff and Faculty, TJAGSA |
| CPT Charles E. Lance | 24th Advanced Course | USALSA with Station Stuttgart, Germany |
| CPT William H. Lantz | Korea | Fort Baker, California |
| CPT Ralph E. Larson | Thailand | Fort Lewis, Washington |
| CPT Garey L. Laube | 24th Advanced Course | Fort Hood, Texas |
| CPT Gerald J. Leeling | Fort Bragg, North Carolina | Korea |
| CPT Jerome L. Lemberger | Fort Knox, Kentucky | 25th Advanced Course |
| CPT Paul W. Lewis | Europe | Arlington Hall Station, Virginia |
| CPT Kom F. Loh | United States Army Communication Command, Fort Huachuca, Arizona | United States Army Intelligence School, Fort Huachuca, Arizona |
| CPT John W. Long | 24th Advanced Course | Europe |
| CPT Michael A. Lyons | Thailand | Europe |
| CPT Karen MacIntyre | Fort Leavenworth, Kansas | Europe |
| CPT Jay P. Manning | 24th Advanced Course | Fort Devens, Massachusetts |
| CPT David O. Markert | Fort Lewis, Washington | 25th Advanced Course |
| CPT Alexander M. Mather | 24th Advanced Course | Fort Carson, Colorado |
| CPT Dale V. Matthews | Europe | USALSA, Falls Church, Virginia |
| CPT James E. McMenis | Fort Drum, New York | Staff and Faculty, TJAGSA |
| CPT Carl F. Meyer | Europe | Rocky Mountain Arsenal, Denver Colorado |
| CPT James D. Mogridge | Europe | 25th Advanced Course |
| CPT Stephen S. Moore | Defense Language Institute | Iran |
| CPT Michael P. Morgan | Staff and Faculty, TJAGSA | Europe |
| CPT Jerome M. Mosier | 24th Advanced Course | Fort Leavenworth, Kansas |
| CPT Vaham Moushegian | Europe | 25th Advanced Course |
| CPT John H. Nix | Europe | United States Army Signal School, Fort Gordon, Georgia |
| CPT Willard E. Nyman | Europe | USALSA, Falls Church, Virginia |
| CPT Delbert S. Olenslager | Fort Lewis, Washington | USALSA with station Fort Lewis, Washington |
| CPT Kent Osborne | United States Army Recruiting Cmd, Fort Sheridan, Illinois | United States Army Garrison, Fort Sheridan, Illinois |
| CPT Peter P. Ottmer | George Washington University | USALSA, Falls Church, Virginia |
| CPT Percival D. Park | Europe | 25th Advanced Course |
| CPT Edelbert F. Phillips | Fort Sam Houston, Texas | USALSA, Falls Church, Virginia |

| *NAME* | *FROM* | *TO* |
|---|---|---|
| CPT Stephen S. Phillips | Europe | USALSA, Falls Church, Virginia |
| CPT Joyce E. Plaut | Europe | 25th Advanced Course |
| CPT James A. Pritchett | Fort Leonard Wood, Missouri | Europe |
| CPT Robert M. Reade | Thailand | Fort Bragg, North Carolina |
| CPT Joseph A. Rehyansky | Europe | Staff and Faculty, TJAGSA |
| CPT Matt Reres | 24th Advanced Course | Office of The Judge Advocate General |
| CPT Arthur L. Reynolds | 24th Advanced Course | Fort Sam Houston, Texas |
| CPT George D. Reynolds | 24th Advanced Course | Carlisle Barracks, Pennsylvania |
| CPT Steven B. Rich | Korea | Fort Carson, Colorado |
| CPT Joseph R. Rivest | West Point, New York | 25th Advanced Course |
| CPT Gary F. Roberson | Fort Shafter, Hawaii | Tripler Army Medical Center, Hawaii |
| CPT LeRoy W. Robinson | USALSA, Falls Church, Virginia | Fort Belvoir, Virginia |
| CPT Daniel L. Rothlisberger | Fort Lewis, Washington | 25th Advanced Course |
| CPT Ronald A. Salvatore | West Point, New York | 25th Advanced Course |
| CPT Jeffrey A. Sayles | 24th Advanced Course | Fort McPherson, Georgia |
| CPT Gerald M. Scanlan | Fort Huachuca, Arizona | Panama |
| CPT David A. Schlueter | Fort Belvoir, Virginia | 25th Advanced Course |
| CPT Alan W. Schon | Defense Language Institute | Europe |
| CPT Paul W. Schwarz | Thailand | Fort Ord, California |
| CPT John A. Schwartz | Fort Bliss, Texas | Korea |
| CPT Paul M. Seibold | Europe | 25th Advanced Course |
| CPT Michael D. Smith | Defense Language Institute | Europe |
| CPT Peter M. Smith | Arlington Hall Station, Virginia | 25th Advanced Course |
| CPT James O. Smyser | Fort Lewis, Washington | 25th Advanced Course |
| CPT Terry A. Stepp | USALSA, Falls Church, Virginia | 25th Advanced Course |
| CPT Vaughn E. Taylor | Europe | 25th Advanced Course |
| CPT Lewis L. Thompson | Carlisle Barracks, Pennsylvania | 25th Advanced Course |
| CPT Juan H. Torres | Puerto Rico | Fort Sam Houston, Texas |
| CPT Thomas N. Tromey | United States Armor Center, Fort Knox, Kentucky | United States Army Armor School, Fort Knox, Kentucky |
| CPT Carlos A. Vallecillo | 24th Advanced Course | Fort Stewart, Georgia |
| CPT Christian F. Vissers | 24th Advanced Course | Office of The Judge Advocate General |
| CPT Anthony L. Wagner | Europe | 25th Advanced Course |
| CPT Frank J. Wagner | Europe | Staff and Faculty, TJAGSA |
| CPT Alexander M. Walczak | Fort Riley, Kansas | 25th Advanced Course |
| CPT Michael J. Wentink | Europe | 25th Advanced Course |
| CPT Riggs L. Wilks | Europe | 25th Advanced Course |
| CPT Vincent J. Wloch | Korea | Fort Lee, Virginia |
| CPT Vincent P. Yustas | 24th Advanced Course | Korea |
| CPT Edward R. Ziegler | 24th Advanced Course | Hawaii |

By Order of the Secretary of the Army:

*Official:*

PAUL T. SMITH
*Major General, United States Army*
*The Adjutant General*

FRED WEYAND
*General, United States Army*
*Chief of Staff*